

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1266 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KALIBEN KALABHAI DESAI

Versus

ALABHAI KARAMSHIBHAI DESAI

Appearance:

MR NILESH M SHAH for Petitioner

MR RC JANI with MR HS MULIYA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/02/2000

ORAL JUDGEMENT

1. This revision application under section 115 of C.P.C. by wife is directed against the order of the learned 5th Jt. Civil Judge (S.D.), Mahesana on her application under section 24 of the Hindu Marriage Act in H.M.P. No. 53 of 1998. Under the impugned order, the

learned trial court awarded the interim maintenance to the wife petitioner at the rate of Rs.600/-p.m. and her minor son Rahul at the rate of Rs.400/-p.m.. Towards the litigation expenses, Rs.2000/- has been awarded.

2. Learned counsel for the petitioner vehemently contended that the learned trial court has committed a serious error or illegality in awarding a meagre sum of maintenance to the wife and her minor child. In his submission, the respondent is a practising advocate. He has a good practice but this meagre amount of maintenance has been awarded. His earnings are about Rs.10,000/- to 12,000/- p.m. from his practice and further he has regular income from the agricultural land. Alternatively, it is contended that even if we go by the findings of the court below where the respondent's income was taken to be Rs.3000/- to Rs.5000/-p.m., the amount of maintenance awarded is certainly towards the lower side. It has next been contended that the respondent is an advocate and expected to know law but he has not produced any evidence in support of his income. In the absence of any evidence, his income as disclosed by the wife should have been accepted. Re her claim of litigation expenses, the counsel for the petitioner contended that looking to the high expenses of the litigation these days, Rs.7000/- is a reasonable sum which should have been awarded.

3. On the other hand, the counsel for the respondent strongly opposed this revision application. In his submission, the amount of maintenance awarded is towards the higher side. Re claim of the litigation expenses is concerned, it is urged that the petitioner is entitled for free legal aid and she could not have been awarded any amount under this head. She is entitled for free legal aid, should have approached to the authority concerned rather than to engage an advocate and put heavy burden of litigation expenses on the shoulder of the respondent.

4. I have given my thoughtful consideration to the rival contentions made by the learned counsel for the parties.

5. In the matter of grant of interim maintenance to the wife or the minor child under sections 24 and 26 of the Hindu Marriage Act, 1956 what I noticed the courts subordinate consider this class to be a chattels or as if they are granting any charity to them. Section 24 of the Hindu Marriage Act is a socio-economic piece of legislation. Its underlying object and purpose are that

the wife who is unable to maintain herself and is living separately from her husband during the pendency of the matrimonial dispute in court has to be given a reasonable sum towards the interim maintenance. Similar is the case with the minor child. It is not only a legal duty but a pious obligation of the husband and the father to maintain his wife and child. It is unfortunate that because of difference or disputes between them they are unable to live together but so long as this relation continues, it is the legal duty of the husband to maintain his wife and the child. The court below has not taken the notice of the fact that the living cost is very high nowadays. The costs of bare necessities of life are very high. Further expenses are to be borne for clothing, medical facilities, housing, education of child etc.. After noticing all these factors and keeping in view the income of the husband, a reasonable sum is to be awarded towards interim maintenance to the wife and the child. Though the wife has stated the income of the petitioner to be Rs.10,000/- to Rs.12,000/- p.m. but she has not produced any evidence except what she has orally said. The respondent is in possession of the best evidence of his income and where he has not produced any evidence of his income, ordinarily what his income is stated by the wife has to be accepted, more so when here is a case of an practising advocate. It is unfortunate that the respondent, a practising advocate, is adopting this mode and method so that the wife and child may not get reasonable sum of the interim maintenance. He being an advocate is expected to come up with fairness, clean hands and reasonably before the court. Be that as it may.

6. The court below has accepted the income of the respondent to be Rs.3000/- to Rs.5000/-p.m.. The benefit of doubt has to go in favour of the wife and in these facts, I consider it to be a fit case where the income of the respondent has to be taken to be Rs.5000/-p.m.. If we go by this figure then out of this amount he has to part with a reasonable sum for his wife and child. Normal rule is to award 1/3rd of this amount to the wife as interim maintenance per month. Similarly, a reasonable sum is also to be awarded to the child. In this case, I consider it to be appropriate and reasonable that the mother and child be given Rs.3000/-p.m. as interim maintenance. Ordered accordingly. This amount shall be payable by the respondent from the date of filing of the application by the petitioner under section 24 of the Hindu Marriage Act.

7. So far as the claim of the petitioner of

litigation expenses is concerned, I do not find any merits therein. The petitioner is entitled for free legal aid. She should have approached to the authority concerned for free legal services. Merely because she was not knowing of her this right or it was not being made known to her by the advocate, this burden cannot be put on the shoulder of the husband. It was the duty of the advocate when she approached to him to let her know that she is entitled for free legal services. It is not done in trial court as well as in this court also, which is clearly borne out from the fact here also she is appearing through a paid advocate. In this court also, the advocate should have made known to her that she is entitled for free legal services. It is unfortunate that this programme of free legal services is not successful to the extent to what it should have been because of this noncooperative attitude of the members of the Bar. The judicial officers are also equally responsible for this non-availability of these benefits to this class of litigants. In each case where a woman or child is a party, it is equally a duty of the judicial officer concerned to let them know that they are entitled for free legal aid. Be that as it may. It is still open to the petitioner to approach to the authority concerned before the trial court and get free legal aid. She can also apply for free legal aid before this court to the authority concerned. In case the amount which is paid by her to counsel and the amount of expenses exceed the amount which is being sanctioned in her favour towards the expenses of litigation by authority in lower court, the balance has to be borne out by her. Here also she has to bear the balance of amount of expenses which she incurred in this revision application where the amount which is ultimately sanctioned by the legal services authority in her favour here in this court is less. However, it is expected from the learned counsel that they will in that eventuality not charged from this lady the amount towards their fees exceeding the amount sanctioned in her favour by the authority in the lower court and this court.

8. In the result, this revision application succeeds to the extent aforesaid. The respondent husband is directed to pay the amount of arrears of maintenance to the petitioner at the rate of Rs.3000/-p.m. within a period of two months from the date of receipt of writ of this order and further to continue to pay monthly to her regularly. Compliance of this order to be reported to this court. Rule is made absolute in the terms aforesaid with no order as to costs.

zgs/-